

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs at Knoxville April 29, 2009

STATE OF TENNESSEE v. CHRIS L. YOUNG

Appeal from the Circuit Court for Montgomery County
No. 40700780 Michael R. Jones, II, Judge

No. M2008-01255-CCA-R3-CD - Filed September 9, 2009

The Defendant, Chris L. Young, was convicted following a bench trial in the Circuit Court for Montgomery County of possession of one-half gram or more of cocaine with intent to sell, a Class B felony, unlawful possession of a weapon with intent to employ it in the commission of a felony, a Class E felony, and simple possession of marijuana, a Class A misdemeanor. He received an effective sentence of eight years on community corrections with 180 days to be served in jail. On appeal, the Defendant contends that the trial court erred by denying his motion for a judgment of acquittal after allowing the State's motion to reopen the proof. We hold that the trial court did not err in denying the Defendant's motion for a judgment of acquittal. We affirm the judgments of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Circuit Court Affirmed

JOSEPH M. TIPTON, P.J., delivered the opinion of the court, in which NORMA MCGEE OGLE and D. KELLY THOMAS, JR., JJ., joined.

Jeffrey S. Grimes, Clarksville, Tennessee, for the appellant, Chris L. Young.

Robert E. Cooper, Jr., Attorney General and Reporter; J. Ross Dyer, Senior Counsel; John Wesley Carney, Jr., District Attorney General; and Christopher Gene Clark, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

The evidence at the trial was that the Defendant was a passenger in a car driven by Michael Rudolph. Officer Will Evans of the Clarksville Police Department testified that he observed the driver without a seat belt and stopped the car. He said that after he verified the driver was a juvenile, the juvenile was taken into custody. He said he requested identification from the Defendant. The Defendant provided him with a false name, Donovan Jones, and stated that he did not possess identification. Officer Evans said he requested that the Defendant step out of the car. He said he searched the Defendant and found two baggies, one inside the other. He said that the interior baggie

contained two pieces of white crystalline material and that the outer baggie contained a green leafy material. He said he found a loaded revolver in the Defendant's right rear pocket.

Officer Evans testified that he contacted the major crimes division supervisor and the on-call drug agent, Detective Raymond Macias. He said he gave the baggies to a backup officer. He said he later retrieved the baggies from the backup officer, placed them in an evidence envelope, and gave the envelope to Detective Macias. He said he delivered the revolver to Detective Macias in an evidence bag with his own markings on it. He testified that the baggies, the revolver, and the bullets were the ones he retrieved from the Defendant. The State marked the baggies for identification but did not submit them into evidence.

On cross-examination, Officer Evans stated that he found the baggies containing the green and white substances in the Defendant's front pocket. On redirect examination, Officer Evans testified that the Defendant appeared "high." He said that he asked the Defendant if he were high and that the Defendant responded he had "smoked a blunt" before being stopped. He said that he did not find any drug paraphernalia on the Defendant or in the car.

Michael Rudolph testified that when he and the Defendant first saw the police, the Defendant requested that he turn the vehicle around and drive in the opposite direction. He said that he did not know the Defendant was carrying drugs or a gun.

Detective Raymond Macias of the Clarksville Police Department testified that he worked in the drug investigations unit and was called to the scene of the Defendant's arrest. He said he interviewed the Defendant afterwards at his office. He said that the Defendant was acting strangely and appeared "high." Detective Macias said he advised the Defendant of his rights and asked if the Defendant would give a statement. He said the Defendant agreed to give a statement. He testified that the Defendant stated that the cocaine and marijuana belonged to him. He said the Defendant stated that he worked for his grandfather at a funeral home. He said the Defendant had approximately \$270 in cash on him at the time of his arrest, all in \$20 and \$10 bills. He said the Defendant signed a written statement acknowledging that the marijuana, the crack cocaine, and the gun "came out of [his] pocket so it was [his]." He testified that the chain of custody of the green and white substances and the gun passed from Officer Evans to him and that he retained custody of the gun but sent the drugs to the lab for testing. On cross-examination, Detective Macias stated that the Defendant told him he was carrying the gun for protection because the Defendant had been threatened previously.

Agent John Scott, Jr., a forensic chemist with the Tennessee Bureau of Investigation (TBI), testified that he examined the materials inside the baggies and found them to be 6.5 grams of marijuana and 6.8 grams of crack cocaine. Agent Scott identified and authenticated a copy of the TBI lab report that reflected these results.

At the close of the State's proof, the Defendant moved for a judgment of acquittal because the State had not submitted the cocaine and marijuana into evidence. The Defendant argued that

because the drugs were not in evidence, the charge of unlawfully carrying a weapon with the intent to employ it in the commission of a felony could not stand. The State moved to reopen its proof. The trial court granted the State's motion and admitted the cocaine and marijuana into evidence. The trial court then denied the Defendant's motion for judgment of acquittal. The Defendant did not offer proof.

The trial court found beyond a reasonable doubt that the Defendant knowingly possessed the loaded revolver. The trial court also found that cocaine and marijuana were found on the Defendant, that he knowingly possessed with intent to sell one-half gram or more of cocaine, and that he knowingly possessed the marijuana.

At the hearing on the motion for new trial, the trial court affirmed that sufficient evidence existed to prove beyond a reasonable doubt that the Defendant was guilty of all three offenses. The trial court concluded that reopening the proof to allow the State to submit additional evidence was within its discretion.

The Defendant contends that the trial court erred in denying his motion for judgment of acquittal. He argues that the evidence is insufficient to warrant a conviction because when the State rested its case, the cocaine and marijuana were not in evidence. In this regard, he argues that the trial court should not have granted the State's motion to reopen the proof to allow in the drug evidence while his motion for judgment of acquittal was pending. Because there were no drugs in evidence, he says, his felony and misdemeanor possession convictions cannot stand. He also argues that because his felony possession of cocaine conviction cannot stand, his conviction for possession of a weapon with the intent to employ it in the commission of a felony also must be overturned.

The State responds that the trial court had the discretion to permit the introduction of evidence after the State had rested its case. It argues that the trial court's actions did not amount to an injustice. It contends that the drugs had been discussed by all of the witnesses and that the Defendant had already admitted that the drugs were his in his statement to Agent Macias.

I. REOPENING OF THE PROOF

A trial court may exercise its discretion to reopen the proof. Oliver v. State, 348 S.W.2d 325, 327 (Tenn. 1961). Absent a showing of injustice, the trial court's decision to reopen the proof will not be overturned on appeal. Simpson v. Frontier Cmty. Credit Union, 810 S.W.2d 147, 149 (Tenn. 1991); State v. Brock, 940 S.W.2d 577, 580 (Tenn. Crim. App. 1999); State v. Bell, 690 S.W.2d 879, 882 (Tenn. Crim. App. 1985). This court has affirmed a trial court's grant of a motion to reopen the proof in order that the prosecution could provide evidence that the defendant was in possession of an automobile that was involved in a burglary. State v. Tuttle, 914 S.W.2d 926, 930 (Tenn. Crim. App. 1995).

In its brief, the State relies in part on State v. Alderson, No. 01C01-9611-CC-00461, Maury County, slip op. (Tenn. Crim. App. Nov. 21, 1997). In Alderson, the defendant moved for judgment

of acquittal at the close of the State's proof. The prosecution moved to reopen the proof while the defendant's motion for judgment of acquittal was pending. The trial court granted the motion to reopen and this court affirmed, stating that "[i]n the absence of an injustice, a trial court's decision to permit the introduction of further evidence after a party has rested must be upheld." Id. at 5. This court also noted with approval the rule stated in United States v. Thetford, 676 F.2d 170, 182 (5th Cir. 1982): "In exercising its discretion, the court must consider the timeliness of the motion, the character of the testimony, and the effect of granting of the motion."

Applying the Thetford factors, we hold that the trial court did not abuse its discretion in reopening the proof to allow the State to submit the drugs into evidence. The State moved to reopen the proof as soon as it learned that it had marked the cocaine and marijuana for identification but due to oversight failed to move the drugs into evidence. Because there was already eyewitness testimony concerning the Defendant's possession of the cocaine and marijuana, the character of the drug evidence was not significantly different than the previously admitted evidence. The effect of the drugs' admission did not prejudice the Defendant's case.

II. MOTION FOR JUDGMENT OF ACQUITTAL

We next address the trial court's denial of the Defendant's motion for judgment of acquittal. The trial court determines a motion for judgment of acquittal by the same standard that applies when it determines the sufficiency of the evidence after a conviction. Tenn. R. Crim. P. 29(b); Cottingham v. Cottingham, 193 S.W.3d 531, 538 (Tenn. 2006) (citing State v. Thompson, 88 S.W.3d 611, 614-15 (Tenn. Crim. App. 2000)); State v. Anderson, 880 S.W.2d 720, 726 (Tenn. Crim. App. 1994). When faced with a motion for judgment of acquittal, the court must view the evidence in the light most favorable to the prosecution and determine whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 319 (1979); State v. Hall, 8 S.W.3d 593, 599 (Tenn. 1999); Anderson, 880 S.W.2d at 726. On appeal, the State is entitled to the strongest legitimate view of the evidence and any reasonable inferences which might be drawn from it. State v. Campbell, 245 S.W.3d 331, 335 (Tenn. 2008); State v. Cabbage, 571 S.W.2d 832, 836 (Tenn. 1978).

Applying these standards and based upon the record, there was sufficient evidence to find the Defendant guilty beyond a reasonable doubt. Initially, we believe that the evidence was sufficient to convict even without the cocaine and marijuana in evidence. Officer Evans testified that after he received the Defendant's consent, he found a green leafy material and a white crystalline substance in the Defendant's pocket. He also found a loaded revolver on the Defendant's person. Detective Macias testified that he received the drugs from Officer Evans and then transferred them to the TBI. Detective Macias testified that the Defendant admitted the drugs were his. Agent Scott with the TBI testified that his laboratory tests confirmed that the substances tested as 6.5 grams of marijuana and 6.8 grams cocaine. In addition, the trial court had received in evidence as Exhibit 3 the Defendant's signed statement in which he admitted that the marijuana and cocaine were his, and as Exhibit 4 the TBI Official Forensic Chemistry Report which identified the substances as Marihuana and Cocaine Base. In any event, with the drugs in evidence, we hold that the State

presented sufficient evidence for the trial court to determine that the Defendant was guilty of the drug offenses. It necessarily follows that the Defendant was also guilty of the felony unlawful possession of a weapon offense.

III. CONCLUSION

The trial court had discretion to reopen the proof, and the Defendant has failed to show an abuse of discretion. The State presented sufficient evidence that the Defendant possessed the cocaine, marijuana, and weapon, and the trial court properly denied the Defendant's motion for judgment of acquittal. Accordingly, the judgments of the trial court are affirmed.

JOSEPH M. TIPTON, PRESIDING JUDGE